Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT AINITAL.

A.O. No. 365 of 2002

Baldev Singh S/o Sri Balkar Singh
R/o B-32 New Subji Mandi,
Kichha Road, Rudrapur, P.S.Rudrapur,
District- Udham Singh Nagar.
..... Claimant/appellant

Versus

(1)Daleep Singh S/o Sri Kartar Singh,
R/o Narkhera, P.O.Patwai,
District-Rampur, U.P.

(2)United India Insurance Company Ltd.
Branch Kichha, District-Udham
Singh Nagar through its Divisional
Manager, Divisional Office, Haldwani,
District-Nainital, ...Opp.party/Respondents.

Sri Dharam Veer, learned counsel for the claimant/appellant,
Sri D.S.Patni learned counsel for the respondent No.2.

Date: 25th Aug.,2004

Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

This appeal has been directed under Sec.173 of the Motor Vehicles Act, 1988 for enhancement of the amount of award and to modify the judgment and order dated 11.9.2002 passed by Motor Accident Claims Tribunal/Addl. District Judge, Udham Singh Nagar, in Motor Accident Claim Petition No. 149 of 2001, whereby the Tribunal has allowed the claim petition of the injured claimant holding the contributory negligence of the claimant in the accident.

2- Brief facts giving rise to this appeal are that 19.6.2000 claimant alongwith his brother Sukhdev Singh was coming from Village-Rampura to Rudrapur by Motor cycle. At 10.00 p.m. on Rudrapur-Rampur motor road infront of A.N.Jha Inter College Truck No. UP -22/3850, which was being driven rashly and negligently by its driver hit the motor cycle of the claimant due to which his leg crushed badly and his brother, who was pillion rider, fell in the Khud of the left side of the road. The said Truck was coming from the side of Rudrapur. The claimant got his injuries medically treated in Keshlata Hospital, Bareilly, where his leg was amputated due to its begin severally damaged. He was 31 years of age at the time of accident and was earning Rs. 4,000/- per month by doing business work. The claimant has become handicap due to amputation of leg. In his treatment he has spent about Rs. 2 lacs. The claimant filed the claim petition under Sec. 166/140 of the Motor Vehicles Act for compensation before the Tribunal due to injuries received by him in the said accident.

3- The opposite parties contested the claim petition by filing their separate written statements. The Opp.party No.1-owner of the offending truck pleaded that the offending truck No. UP 22/3850 was insured with United India Insurance Company Ltd. Kichha and the driver Daleep Singh was having a valid driving licence at the time of accident. The Opp. Party No.2 United India Insurance Company denied all the allegations of the claim petition and only pleaded that the insurer of the Motor Cycle has not been made party by the claimant in the claim petition and the compensation claimed is highly exaggerated. The Tribunal framed the necessary issues on the pleadings of

the parties and recorded the evidence. The claim petition was allowed for Rs. 4,88,000/- holding that the claimant was also negligent for the alleged accident and fixed the fifty per cent liability out of the award on him. Feeling aggrieved the injured-claimant has come up in the appeal.

4- The learned counsel for the appellant challenged the appeal only on the ground that the learned Tribunal has wrongly held that the accident occurred due to the contributory negligence of the claimant while the claimant has proved in his evidence that the alleged accident took place only due to the negligent and rash driving of the said truck No.UP-22-3850 and submitted that the award in question may be set aside and modified in respect of fifty per cent liability of the appellant.

5- We have gone through the entire material on record and perused the impugned judgment. The challenge is concerned with issue No. 1 which reads as follows:-

> *"Whether the accident occurred on 19.6.2000 due to rash and negligent driving of Truck No. UP-22-3850 in front of A.N.Jha Inter College at Rudrapur-Rampur road ? If so, its effect ?*

6- The learned Tribunal while deciding the above issue gave its finding that it is clear from the perusal of paper No.20-Ga/2 that on 20.6.2000 a report has been lodged by the claimant regarding this accident. The seal of concerned Police Station is affixed on this paper. D.W.2 Constable Lal Singh has also corroborated this fact in his statement on oath before the Tribunal. The Tribunal further held that by oral evidence as well as by documentary evidence (paper No.20-Ga/2) it is proved that

on 19.6.2000 the driver of Truck No. UP-22-3850 by driving the said truck rashly and negligently hit the motor cycle of the claimant due to which accident occurred and decided the issue accordingly in favour of the injured claimant.

7- The finding given by the Tribunal on issue Nos. 3 & 4 that according to admitted facts it was head on collision by both the vehicles and if some extraordinary precaution would have been taken by the claimant, the accident due to this head on collision could have been avoided. The tribunal erroneously came to the conclusion that the driver of the offending truck and the claimant both were equally liable for the accident while it was nowhere pleaded by the Insurance Company that the accident did occur due to contributory negligence of the driver of the offending truck and the claimant. Therefore, the finding on the point of contributory negligence is wrong and without any basis. We hold that the sole liability goes to the Insurance Company for payment of compensation.

8- The appeal succeeds and is allowed. The Opp.party No.2-United India Insurance Company shall pay the entire amount of award i.e. Rs.4,88,000/- (Rupees four lac eight eight thousand) alongwith interest. The impugned order dated 11.09.2002 is modified accordingly.

(B.S.Verma,J.) **(P.C.Verma,J.)**

P.Singh